IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No. 658l of 2004

Momin Azhar Iqbal Ahmed....petitioner

vs

The Directror of Edn and ors ..respondents

Mr A.R.Shaikh for petitioners

Mr.R.D.Rane AGP for respondent nos.l to 3

Mr. Javed Hussein with Mr A.A Saleem for respondent nos. 4 and 5

CORAM: A.P.SHAH & S.U.KAMDAR JJ.

lst October, 2004

P.C.

Heard advocates.

By Government Resolutions dated l.3.2000, 30.5.2000, 29.6.2000 and 22.l2.2000 it was made obligatory on the part of the managements of the aided schools to obtain prior permission of the State Government to appoint non-teaching staff in their recognised schools. In the instant case, the

management did not follow the procedure and without obtaining prior permission filled the post of Lab Assistant by recruiting the present petitioner and forwarded the proposal to the respondent no. 3 for approval to his appointment. It is true that the post on which the petitioner was appointed was a permanent post but the appointing authority did not obtain prior permission for recruitment nor it has submitted proposal to that effect to the Competent Authority.

The State Government in its Government Resolution dated 30.5.2000 has clearly mentioned that the total resources within the State are inadequate as a result of which sufficient funds can not be made available towards the over all development works for the State. Hence with a view to control the increasing expenditure of the State, the State has decided to impose some restrictions, one of which was not to fill up the posts of non teaching staff in the aided schools or if such post was to be filled in the prior permission of the Committee formed by the State was made compulsory. It is

claimed by the respondents that by letter dated l3.ll.2000 the Head Master i.e. respondent no 5 has been informed that proposal for approval to the appointment of the petitioner as a Lab Assistant has been rejected. This is disputed by the management, but in any event, the management has failed to explain as to why the procedure prescribed for appointment was not followed.

In the above circumstances, we are not inclined to accept the prayer of the petitioner for grant of approval to his appointment from the date of his appointment. However, we are informed that there is further development and State has now lifted the ban which was imposed earlier by permitting recruitment to the extent of 50%. In view of this position we direct the State Government to consider petitioner’s case afresh and grant approval to his appointment with effect from G.R dated l8th August 2004 lifting the ban to the extent of 50% and release the salary of the petitioner from the said date. It appears that the petitioner has not been paid salary since July 2000. This position is not

disputed by the management. We therefore direct the management of the school to pay the salary of the petitioner from July 2000 till l8th August 2004 in three equal quarterly instalments commencing from lst January 2005.

Petition is disposed of accordingly with no order as to cost.